(2)

Supreme Court, U.S.
FILED
MAY 11 2004
OFFICE OF THE CLERK

No. 03-1281

IN THE

Supreme Court of the United States

TOWN OF ISLIP, NEW YORK, *et al.*,

Petitioners,

v.

HOWARD NORTON,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF IN OPPOSITION

THOMAS L. COSTA
LAW OFFICES OF THOMAS L. COSTA, LLP
One Huntington Quadrangle
South Wing, Suite 3S03
Melville, New York 11747
(631) 752-0303

Counsel for Respondent

187391

BEST AVAILABLE COPY

QUESTION PRESENTED

Is there a compelling reason within the purview of Rule 10 of the Court to grant review on a writ of certiorari of the summary order of affirmance of the Court of Appeals for the Second Circuit, by Order filed on October 9, 2003 (the "Summary Order"), the holding that that the Town did violate plaintiff's right to procedural due process when it issued a certificate of occupancy ("C/O") that contained certain "revoking notations" concerning plaintiff's right to a nonconforming use in his property, and a denial of petitioner's combined motion for rehearing and for rehearing *en banc* filed on December 5, 2003?

TABLE OF CONTENTS

Page

QUESTION PRESENTED i

TABLE OF CONTENTS ii

TABLE OF CITED AUTHORITIES iii

STATEMENT OF THE CASE 1

REASONS FOR DENYING THE PETITION 3

POINT I

PLAINTIFF'S ESTABLISHED PROPERTY RIGHTS DO NOT TERMINATE "BY OPERATION OF LAW", BUT ONLY WITH DUE PROCESS OF LAW 6

POINT II

PLAINTIFF'S PROCEDURAL DUE PROCESS CLAIMS WERE RIPE FOR REVIEW 9

POINT III

THE TOWN WAS OBLIGATED TO PROVIDE PLAINTIFF WITH PRE-DEPRIVATION DUE PROCESS 13

CONCLUSION 15

TABLE OF CITED AUTHORITIES

Page

Cases

Armstrong v. Manzo, 380 U.S. 545 (1965) 13, 14

Brady v. Town of Colchester, 863 F.2d 205 (2d Cir. 1988) 5

DeNicola v. Scarpelli, 546 N.Y.S.2d 630 (2d Cir. 1989) 9

Doe v. Pfrommer, 148 F.3d 73 (2d Cir. 1998) 10

Dougherty v. Town of North Hempstead Board of Zoning Appeals, 282 F.3d 83 (2d Cir. 2002) 9

Ford v. Shalala, 87 F. Supp.2d 163 (E.D.N.Y. 1999) 6

Goldberg v. Kelly, 397 U.S. 254 (1970) 14

Hudson v. Palmer, 468 U.S. 517 (1984) 14

Logan v. Zimmerman Brush Co., 455 U.S. 422 (1982) 7

Loudermill v. Cleveland Board of Ed., 470 U.S. 532 (1985) 6, 13-14

Mathews v. Eldridge, 424 U.S. 319 (1976) 13

Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306 (1950) 14

Cited Authorities

Page

Parratt v. Taylor, 451 U.S. 527 (1981) 14

Patsy v. Board of Regents of the State of Florida, 457 U.S. 496 (1982) 10, 11

Patterson v. Coughlin, 761 F.2d 886 (2d Cir. 1985) 13

People v. Minori, 160 Misc. 485 (Justice Ct. 1994) 8

Southview Associates v. Bongartz, 980 F.2d 84 (2d Cir. 1992) *cert. denied*, 507 U.S. 987 (1993) 10

Stephentown Concerned Citizens v. Herrick, 246 A.D.2d 166, 676 N.Y.S.2d 246 (3d Cir. 1998) 7

United States v. Quinones, 313 F.3d 49 (2d Cir. 2002) 12

Weissman v. Fruchtman, 700 F. Supp. 746 (S.D.N.Y. 1988) 11

Williamson County Regional Planning Comm'n v. Hamilton Bank, 473 U.S. 172 (1985) 9, 10, 11

Zinermon v. Burch, 494 U.S.113 (1990) 13

Cited Authorities

Page

United States Constitution:

Fifth Amendment 11

Statutory Authorities:

Federal

42 U.S.C. § 1983 ..... 6, 10

State

Islip Town Code § 68-14 1

Islip Town Code § 68-15 ..... 7, 8

Islip Town Code § 68-15(B) 7

Islip Town Code § 27-96 8

Islip Town Code § 68-20 ..... 8, 12

Islip Town Code § 68-39 8

Islip Town Code § 68-40 ..... 3, 8

STATEMENT OF THE CASE

Plaintiff (respondent) is the owner of a residential dwelling in New York (the "Premises"), which, as early as 1933 and continuing to the present, was improved with a two-family dwelling (JA[1] 62-65). When the two-family use was commenced, it was maintainable as a matter of right under the statutes, ordinances, and general rules of law then in effect in the Town of Islip ("the Town") (JA 62). Although the Town later adopted a zoning ordinance (the "Town Code") which zoned the Premises in an area restricted to "single-family detached dwellings, the Premises' established two-family use was permitted to continue as a "Legal Nonconforming Use" under § 68-14 of the Town Code (JA 62, 63, 471). Under § 68-15 of the Town Code, any established legal nonconforming use is entitled to continue, in *perpetuity* (except for certain specific uses not relevant herein) unless certain specific events enumerated in that code section are established (JA 63, 471, 472). Under § 68-20 of the Town Code, a real property's legal nonconforming use *must* be reflected in the property's certificate of occupancy that is issued by the Town (JA 473). Section 68-20 of the Town Code further provides that any certificate of occupancy specifying the legal nonconforming use "*shall constitute presumptive use* in any action or proceeding" (JA 473) (emphasis added).

As required under § 68-20 of the Town Code, the Town officially certified the establishment and continued existence of the Premises' legal nonconforming use in various certificates of occupancy issued on various dates (JA 63, 100, 103, 109, 111).

---

1. "JA" references are to the Joint Appendix.

Sometime after plaintiff's purchase of the Premises, a Town official advised plaintiff that he needed to obtain a rental permit from the Town if he wanted to rent the Premises (JA 82). Accordingly, in 1988, plaintiff submitted an application to the Town for a two-family rental permit (JA 66). The Town, however, returned plaintiff's application with a letter dated May 14, 1988 stating that plaintiff "must go before the Board of Appeals, with regard to your nonconforming use" (JA 66). No other explanation of the Town's refusal to issue a rental permit to plaintiff was given (JA 66). The Town did not take any official action at that time to terminate or revoke the established status of the Premises' legal nonconforming use or the Premises' last-issued certificate of occupancy certifying such permitted usage (JA 67). To the contrary, the Town issued and provided plaintiff with another certificate of occupancy for the Premises, again certifying the Premises' established status as a legal nonconforming two-family dwelling (JA 67, 103). Plaintiff commenced an Article 78 proceeding in New York State Supreme Court, seeking a judgment directing the Town to issue a rental permit to him (JA 67), in which the Town argued that the Premises no longer constituted a legal nonconforming use as a result of being vacant for a period in excess of one year (JA 67-68), but acknowledged that their legal "position" was not based upon any actual revocation or termination by the Town, but that the issue must be determined by the Town's Zoning Board of Appeals (JA 68). The Court denied plaintiff's petition, but offered no opinion as to the status of the Premises' legal nonconforming use (JA 68-69).[2] The Town did not initiate any judicial or

2. The District Court (Seybert, J.), specifically found that the New York Supreme Court "offered no opinion as to the status of the premises' legal nonconforming use as a two-family residence." (JA 34).

administrative action before the Zoning Board of Appeals prior to 1997 to revoke the Premises' legal nonconforming use (JA 70-71) and the Premises continued to be taxed by the Town as a legal two-family residence (JA 65).

In 1997, the Town served Plaintiff with an Accusatory Instrument charging him with wrongfully violating § 68-40 of the Town Code (the "Criminal Proceeding"), which states "No occupancy or use shall be made of land or a building that is not consistent with the last-issued certificate of occupancy for such building or use of land unless a permit is secured." (JA 71-72) Thereafter, the Town issued a new C/O for the Premises ("the 1997 C/O") that included the "Revoking Notations". The Town's 1997 Actions in issuing the 1997 C/O containing the Revoking Notations were made without providing plaintiff with any prior notice or opportunity to be heard (JA 73).

REASONS FOR DENYING THE PETITION

The Petition should be denied because there is no compelling reason within the purview or character of Rule 10 of the Court offered by Petitioner that warrants the grant of certiorari in this case. Instead, the Town argues that "This Court's intervention is required to avoid the "federalization" of local zoning disputes" (Petition, at 8). That rationale, even if applicable, would not be a sufficiently compelling reason to grant certiorari under the circumstances of this case. However, this case does not involve a zoning dispute, and Petitioner mischaracterizes plaintiff's claim, which is rooted in the Town's violation of plaintiff's constitutionally protected procedural due process rights. Plaintiff has not sought a permit for the development of his property, or any other zoning approval from the Town, such

that the exhaustion of any available administrative remedies could result in the approval of his proposed land use. Here, plaintiff had what he wanted, an established property right to use his dwelling as a two family residence, long recognized by the Town. His lawsuit seeks redress for injury to the process, guaranteed by the Constitution, not economic damages. In revoking plaintiff's lawful certificate of occupancy permitting such nonconforming use, the Town failed to provide plaintiff with the most basic due process protections, prior notice and an opportunity to heard, and failed to correct its own errors long after it knew or should have known that it had violated plaintiff's constitutionally protected rights. Instead, the Town commenced and continued a criminal prosecution of plaintiff that was both factually and legally flawed from the outset.

The Court of Appeals agreed with the central thesis of plaintiff's complaint, that (i) the Town did violate plaintiff's right to procedural due process, (ii) plaintiff was entitled to a declaratory judgment recognizing that the 1990 C/O was the last validly issued C/O for the premises, (iii) that the Premises will continue to enjoy its status as a legal nonconforming use unless and until the Town revokes its status in accordance with the due process requirements of the Constitution, and (iv) plaintiff is entitled to his attorneys' fees and costs. The District Court rejected the Town's arguments that (1) plaintiff did not possess a protected property interest, (2) plaintiff's nonconforming use terminated "by operation of law", without any affirmative act by the Town ("*the Town's argument is devoid of any merit*"), and that (3) plaintiff had the burden of proving lack of abandonment as a condition precedent to being afforded due process by the Town ("*This argument completely misconstrues the spirit of the Due Process Clause*").

Further, the District Court rejected the Town's claims that (i) plaintiff was not entitled to pre-deprivation due process based upon the *Brady v. Town of Colchester*, 863 F.2d 205 (2d Cir. 1988) application of the "random and unauthorized" conduct rule ("*the court can find no conceivable basis for the Defense's application of Brady*"), and (ii) the availability of post deprivation judicial review bars a procedural due process claim. Finally, the District Court not only rejected the Town's untimely Younger Abstention argument, but plainly noted its displeasure with the Town's actions in this case, writing:

> This eleventh-hour request strikes the court as a dilatory tactic intended to further prolong a course of litigation that has needlessly consumed a vast amount of resources-all because the Town has been unable to afford Plaintiff the most rudimentary elements of due process . . .
>
> . . . The Town's newly sprung opposition to federal adjudication betrays an indifference to federal proceedings that runs counter to the principles of comity-principles which demand mutual respect between state and federal governments, and which do not compel federal courts to defer to litigation strategies pursued by state defendants in bad faith. [Petition 24a]

In sum, while as a result of this action, the Town may be required to revise its Town Code, as well as its policies and practices, in order to provide property owners with a lawful procedure for the termination of an established nonconforming use, and to avoid a re-occurrence of the procedural due process violations found to have occurred in

this case, that is not a sufficient basis for disturbing the Summary Order. To the contrary, that is the public benefit for which Section 1983 was enacted to encourage.

POINT I

PLAINTIFF'S ESTABLISHED PROPERTY RIGHTS DO NOT TERMINATE "BY OPERATION OF LAW", BUT ONLY WITH DUE PROCESS OF LAW

It is undisputed that the plaintiff's two-family home constituted a legal nonconforming use prior to a fire that damaged the Premises in 1984 (JA 500-01), and that such lawful usage was certified by the Town in a number of certificates issued by the Town both before and after 1984, and as recently as 1990 (JA 111). The Town argues that plaintiff must first affirmatively establish that his established legal nonconforming use has not been discontinued or abandoned in order to be afforded due process of law in connection with the Town's termination of his established nonconforming use (Petition, at 11).

This notion, which is at the center of the Town's arguments, flies in the face of the requirements of due process found in the Constitution, is irrational, and is unsupported by the law or the facts. There is no more settled principle of constitutional law that "Once a constitutionally protected property interest exists, procedures utilized to reduce or terminate the protected property interest must comport with the constitutional requirement of due process." *Ford v. Shalala*, 87 F. Supp.2d 163, 175-76 (E.D.N.Y. 1999); *Loudermill v. Cleveland Board of Ed.*, 470 U.S. 532, 541-542 (1985) (protected property rights cannot be deprived except pursuant to constitutionally adequate procedures).

The District Court noted that the Town "provided no legal support for the proposition that the property right . . . may terminate by operation of law, without any affirmative act by the Town" (JA 502). The District Court interpretation was quite correct. Plaintiff has referred to this as the Town's "evaporation theory".

After providing that "any legal nonconforming use may be continued" in perpetuity (except for certain uses not relevant herein), § 68-15(B) merely identifies the substantive events "the standards" which, if proven, would result in the termination of a previously established legal nonconforming use, which standards include abandonment, defined as the "discontinuance of any nonconforming use for a period of one (1) year". However, § 68-15 does not constitute or provide any procedural due process whatsoever, as to how that substantive standard is to be determined. *See* § 68-15 (JA 471-472). In other words, that section merely establishes a "for cause" standard for the deprivation of a vested property right. *See Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 430 (1982) (the hallmark of property "is an individual entitlement grounded in state law, which cannot be removed except 'for cause.'"). In no way can § 68-15 be read to imply an "automatic" termination of an existing and recognized property right, without any official determination and in the absence of a due process procedure. *See Stephentown Concerned Citizens v. Herrick*, 246 A.D.2d 166, 676 N.Y.S.2d 246 (3d Dept. 1998) (zoning restrictions affecting nonconforming uses are to be strictly construed in favor of the property owner). Nowhere in § 68-15 does it state or imply that its provisions are self-effectuating, or that they apply "by operation of law," and if they did, that section would be unconstitutional for the same reasons as are the Town's 1997 Actions.

Moreover, a reading of other provisions of the Town Code defeats the Town's argument that § 68-15 is self-effectuating such that an established nonconforming use can be lost "by operation of law," notwithstanding lawfully issued and outstanding certificates of occupancy issued by the Town to the contrary. Those provisions provide that (i) any permitted use, including specifically an established legal nonconforming use, shall be recited in a Town issued certificate of occupancy (§§ 68-39 and 68-20); (ii) no occupancy or use shall be made that is not consistent with the last-issued certificate of occupancy (§ 68-40); (iii) any occupancy made of a building that is not consistent with the last issued certificate of occupancy is prohibited (§ 68-40), subjecting an owner to criminal prosecution (§ 27-96); and that (iv) a certificate of occupancy issued by the Town containing an endorsement specifying the legal nonconforming use shall constitute presumptive use in any action or proceeding brought under the Town Code (§ 68-20) (JA 473). Clearly, the provisions of the Town Code, taken together, compel the conclusion that an established legal nonconforming use does not simply evaporate "by operation of law." Established nonconforming uses are neither "tenuous" nor "characteristically different" than other property rights, at least under this Town Code. The case law cited by Petitioner either do not accurately reflect New York law, or are otherwise inapposite and inapplicable to this case.

Clearly, lawfully issued certificates of occupancy certifying the permitted uses of a premises are meant to be relied upon not only by existing and prospective landowners, but by the Town itself. *See People v. Minori*, *supra*, 160 Misc. at 485, 487 (Justice Ct. 1994) ("once issued and delivered, [a certificate of occupancy] cannot be recalled, cancelled or vacated at the whim of the homeowner or at the whim of the

Building Department. A certificate of occupancy is a document which must be relied upon in good faith, absent fraud or deceit.") (internal citation omitted); *DeNicola v. Scarpelli, supra*, 546 N.Y.S.2d at 630 (2d Dept. 1989) ("certificates of occupancy . . . establish the legality of the use of the premises [as specifically stated therein]").

As a corollary proposition to its evaporation theory, the Town argues that since plaintiff's established property rights can simply evaporate without any action or determination by the Town accompanied by due process, it is plaintiff's burden to demonstrate, as a condition precedent to being entitled to due process, that plaintiff (*and* his predecessor) did not abandon the nonconforming use of the property, and that the Town has no substantive grounds for terminating plaintiff's established property rights. It is a meritless, irrational argument, intended to avoid its burden of proof of demonstrating that it has obeyed the strictures of the Constitution, which finds no support in the Town Code, the Constitution, or case law.

POINT II

PLAINTIFF'S PROCEDURAL DUE PROCESS CLAIMS WERE RIPE FOR REVIEW

Two District Court Judges held plaintiff's procedural due process claim to be ripe (JA 499-500) (JA 38) (JA 53). The Town's argument is that plaintiff's claims are not ripe because plaintiff never appealed administratively to the Town's ZBA (Petition, at 19), citing *Williamson County Regional Planning Comm'n v. Hamilton Bank*, 473 U.S. 172 (1985), and *Dougherty v. Town of North Hempstead Board of Zoning Appeals*, 282 F.3d 83 (2d Cir. 2002). It is beyond

dispute that there is absolutely no requirement that a plaintiff exhaust state administrative or judicial remedies before filing a § 1983 action. *Patsy v. Board of Regents of the State of Florida*, 457 U.S. 496, 500-01 (1982) ("this Court has stated categorically that exhaustion is not a prerequisite to an action under § 1983, and we have not deviated from that position . . .") *Doe v. Pfrommer*, 148 F.3d 73, 78 (2d Cir. 1998) (recognizing categorical no-exhaustion rule).

There are two prongs to the ripeness approach as interpreted by this Court in *Williamson, supra*, 473 U.S. 172. First is that the administrative initial decision maker's decision must have been final ("finality prong"); second, that the property owner must have unsuccessfully sought just compensation through any available state procedure ("the just compensation prong").

However, such resort to state procedure is not required where the claim is not for a taking. *Southview Associates v. Bongartz*, 980 F.2d 84 (2d Cir. 1992), *cert. denied*, 507 U.S. 987 (1993). There, Second Circuit stated in pertinent part that:

> a substantive due process claim premised on arbitrary and capricious government conduct, however, is subject to *only* the final decision prong of the *Williamson* ripeness test. The requirement that a plaintiff seek compensation in state court is . . . derived from the Takings Clause, . . . to which a substantive due process claim, premised on arbitrary and capricious government conduct, is largely unrelated.

[Emphasis added.] 980 F.2d at 96-97.

Therefore, a purely procedural due process claim, like the one here, where there is no claim for "just compensation", is not subject to the just compensation prong of *Williamson*. Plaintiff's claim was successfully adjudicated with only declaratory relief. Plaintiff's complaint (JA 14-25) never pled any taking or made a Fifth Amendment "Just Compensation Clause" claim. (Further, by stipulation, he previously withdrew even the seeking of any monetary damages.) (JA 497) No economic injury is at issue in this procedural due process case. Accordingly, the just compensation prong of the *Williamson* case does not apply.

As noted by the District Court (JA 37), *Williamson* delineates that "the finality requirement is concerned with whether *the initial decision maker* has arrived at a definitive position on the issue that inflicts an actual, concrete injury. Thus, in *Weissman v. Fruchtman*, 700 F. Supp. 746, 755 (S.D.N.Y. 1988), that court held that exhaustion of administrative remedies was not required in order for a procedural due process claim to ripen.

Here, the actions suggested by the Town, are clearly remedial in nature, a classic administrative remedy of the type the "no exhaustion" doctrine enunciated by *Patsy*, *Williamson*, and their progeny expressly held do not apply to § 1983 actions. Applying these concepts, the District Court properly reasoned:

> While the Board of Appeals could determine whether or not the property's status as a legal non-conforming use was lost or forfeited, this determination in no way would redress plaintiff's complaint that he has been deprived of property without due process of law in violation of the

> Fourteenth Amendment. In other words, even if plaintiff were to obtain a favorable decision from the Board of Appeals, his complaint that he has been deprived of property by means of an unconstitutional process still would survive. *See generally Goldberg v. Kelly*, 397 U.S. 254 (1970).

(JA 38-39.)

Additionally, plaintiff did not have the right to file an appeal to the ZBA. There was never any written decision or determination by a Town official filed by the Town with the Town Clerk that would have permitted plaintiff to initiate an appeal to the ZBA (JA 492). For years, the Town argued that the ZBA had original jurisdiction to hear an application under Town Code § 68-20 to establish a nonconforming use, and *that* was the reason plaintiff should go to the ZBA. This argument was not raised (and therefore abandoned) by the Town on appeal to the Second Circuit, but seems to be suggested in the Petition (Petition, at 19). This section (§ 68-20), which applies only to applications to establish a nonconforming use not previously recognized by the Town, facially does not even apply here, since plaintiff's nonconforming use was already established and long recognized by the Town). The Town has never explained its own failure to pursue any process or procedure through the ZBA to revoke or terminate plaintiff's nonconforming use.

Here, the District Court made the *fact-specific* determination of ripeness required by *United States v. Quinones*, 313 F.3d 49, 58 (2d Cir. 2002) (not once, but twice), and the Petition raises no compelling reason for this Court to review this issue.

POINT III

THE TOWN WAS OBLIGATED TO PROVIDE PLAINTIFF WITH PRE-DEPRIVATION DUE PROCESS

Petitioner argues that the lower courts should have discerned that the alleged availability of post deprivation review comported with due process (Petition, at 21), and satisfies the *Matthews v. Eldridge* balancing test.

The District Court held that the Town had an obligation to provide pre-deprivation due process (JA 505). In its simplest formulation, due process requires an opportunity to be heard "at a meaningful time and in a meaningful manner." *Patterson v. Coughlin*, 761 F.2d 886, 890 (2d Cir. 1985) (quoting *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965)). Applying these fundamental standards, this Court "consistently has held that some form of hearing is required *before* an individual is finally deprived of a property interest." *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976). It is only where a pre-deprivation hearing is unduly burdensome in proportion to the interest at stake or where the State is truly unable to anticipate and prevent a random deprivation of an interest, that post deprivation remedies might satisfy due process. *Zinermon v. Burch*, 494 U.S.113 at 132 (1990). Thus, absent some exigency that requires summary action by the state, or circumstances that render a pre-deprivation hearing impossible as a practical matter . . . "the opportunity to be heard before the state deprives an individual of life, liberty or property is still in the "root requirement" of the due process clause." *Patterson*, 761 U.S. at 892 (quoting *Loudermill v. Cleveland Board*

of Ed., 470 U.S. 532 (1985)); *see also Goldberg v. Kelly*, 397 U.S. 254 (1970); *Armstrong*, 380 U.S. 545; *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950).

Parratt v. Taylor, 451 U.S. 527 (1981) and *Hudson v. Palmer*, 468 U.S. 517 (1984), represent the exceptional situation (unlike the case at bar) where the State simply cannot provide a pre-deprivation hearing because the deprivation complained of occurred through some unforeseeable "random and unauthorized" conduct. In this case, the Town has not claimed (nor can it) that some exigency ever existed such that a pre-deprivation hearing was impossible as a practical matter at any point in time. Further, while not material to the outcome of the Petition, the Town's claim that plaintiff claims only to have been deprived of a property right, not a liberty interest (Petition, at 20), is inaccurate (JA 38).

Therefore, any right that plaintiff may have had to appeal the Town's revocation of his nonconforming use (which the District Court found occurred in 1997, when the Town issued a new C/O containing the revoking notations) (Petition, at 17a), did not negate the Town's obligation to provide him with pre-deprivation due process. Further, the Town has not demonstrated, and the record does not support, its claim that affording plaintiff and others with pre-deprivation due process would impose an unreasonable administrative burden upon the Town. Indeed, as the District Court noted, section 68-20 of the Town Code, dealing with the establishment of a nonconforming use, already requires the Town to hold a hearing prior to approving new nonconforming use applications. ("*It is simply not credible that the Town can hold these preapproval hearings for unestablished nonconforming uses, but cannot hold a hearing prior to*

terminating a vested property right that has already been officially recognized") (Petition, at 19a, 20a). Accordingly, the Petition raises no compelling issue that would warrant review of this issue by this Court.

CONCLUSION

For all of the reasons set forth above, the Court should deny the Petition.

Respectfully submitted,

THOMAS L. COSTA
LAW OFFICES OF THOMAS L. COSTA, LLP
One Huntington Quadrangle
South Wing, Suite 3S03
Melville, New York 11747
(631) 752-0303

Counsel for Respondent